

REMARKS

In the Office Action, the Examiner provisionally rejected claims 1-36. However, for the reasons set forth below, Applicants respectfully submit that all of pending claims 1-36 are presently allowable. Applicants respectfully request reconsideration of the above-referenced application in view of the following remarks.

Provisional Double Patenting Rejection

The Examiner provisionally rejected claims 1-36 under the judicially created doctrine of obviousness-type patenting as being unpatentable over claims 1-36 of copending Application No. 10/323,967. Applicants note that this provisional rejection is the only rejection remaining in the above-identified case. However, Applicants respectfully submit that the Manual of Patent Examining Procedure clearly provides the proper procedure to be employed when a provisional double patenting rejection is the sole rejection remaining in a pending application, stating:

If two (or more) pending applications are filed, in *each* of which a rejection of one claimed invention over the other on the ground of provisional obviousness-type double patenting (ODP) is proper, the (ODP) rejection will be made in each application. If the ODP rejection is the only rejection remaining in the earlier filed of the two pending applications, (but the later-filed application is rejectable on other grounds), *the examiner should then withdraw that rejection and permit the earlier-filed application to issue as a patent without a terminal disclaimer . . .*

If the ODP rejections in both applications are the only rejections remaining in those applications, *the examiner should then withdraw the ODP rejection in the earlier filed application thereby permitting that application to issue without need of a terminal disclaimer.* A terminal disclaimer must be required in the later-filed application before the ODP rejection can be withdrawn and the application be permitted to issue.

Manual of Patent Examining Procedure § 1490, page 1400-95 (emphasis added). In other words, if a provisional double patenting rejection is the only rejection remaining in the earlier filed case, the provisional rejection should be withdrawn and the earlier application should be permitted to issue as a patent.

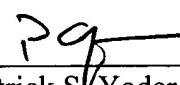
In the present instance, Applicants respectfully submit that copending Application No. 10/323,967 is a continuation of the present application. Consequently, the instant application is the earlier filed of the two pending applications. As explicitly indicated in the passage recited above, because the present application is the earlier filed application, the provisional obviousness-type double patenting rejection should be withdrawn and the present application should be permitted to issue as a patent without a terminal disclaimer. Accordingly, Applicants respectfully request withdrawal of the provisional rejection and allowance of the present claims.

Conclusion

In view of the remarks and amendments set forth above, Applicants respectfully request allowance of the pending claims. If the Examiner believes that a telephonic interview will help speed this application toward issuance, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

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